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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943
No. 396

FRED M. VINSON, Director of Economic Stabilization, by Prentiss M. Brown, Administrator, Office of Price Administration, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

FRED M. VINSON, Director of Economic Stabilization, by Prentiss M. Brown, Administrator, Office of Price Administration, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

PRENTISS M. BROWN, Administrator, Office of Price Administration, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

PRENTISS M. BROWN, Administrator, Office of Price Administration, *Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

Brief of Respondent, Public Utilities Commission, in Opposition to Petition for Writ of Certiorari.

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DIVISION OF PRINTING—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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Brief of Respondent, Public Utilities Commission, in Opposition to Petition for Writ of Certiorari.

COUNTER STATEMENT

On December 13, 1935, the Public Utilities Commission of the District of Columbia (the "Commission") promulgated Order No. 1458, (R. I, 252) providing a sliding scale arrangement for the annual determination of rates for gas service pursuant to the provisions of Paragraph 18 of its Act (37 Stat. 980, Title 43-317 D. C. Code, 1940 Edition; R. I, 246). The plan was promulgated after 3½ years of investigation that cost $750,000 (R. II, 443). It provides for the annual adjustment of rates for each "rate year" to begin September 1, (R. I, 252) based upon the operating expenses for the "test year" ending June 30 preceding the new "rate year". (R. I, 253) The basic elements of the plan consist of (1) the method of establishing the rate base for each year; (2) the method and rates of computing annual accruals for retirement reserve; (3) the primary rate of return; and (4) the method of determining the amount available each year for rate increase or decrease. There have been reductions in rates in each year since the plan was adopted except the years 1937 and 1941, when no changes were made (R. II, 428).[1]

Pursuant to the provisions of the sliding scale, the Commission on March 20, 1942, issued its statutory order of investigation "in conformity with the sliding scale arrangement" (R. I, 33, 39), and on July 21, 1942, pursuant to statutory requirement, issued notice of the hearing to be held "in accordance with the sliding scale arrangement established by Order No. 1458" (R. I, 34).

Both Petitioners were interveners in the proceedings before the Commssion. The Price Administrator was represented at the pre-trial conference (R. II, 429; R. I, 61, 84) and throughout all subsequent hearings (R. I, 40, 253; R. II, 429).

Hearings were concluded and the record closed on September 14, 1942 (R. I, 181), and the parties filed briefs on September

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[1] Rates were reduced under the plan by more than $800,000 in 1935. All the reductions have continued in effect since they were made. The order of October 13, 1942, increased rates for the first time under the plan.

25, 1942 (R. I, 62). Upon petitions of others, the Commission reopened the procedings and set further hearings for September 30, 1942, (R. I., 181) in which counsel for the Petitioners participated and filed a supplemental brief (R. I, 62, 181). The record was closed for the second time on September 30, 1942, prior to the October 2 amendment of the Emergency Price Control Act of 1942.

Clause (2) of Section 302 (c) of the Emergency Price Control Act of 1942 (56 Stat. 36, 50 U. S. C. App., Supp. II, Sec. 942 (c)), specifically excluded from the control and regulation by the Price Administrator, rates charged by common carriers or other public utilities. Clause (2) of Section 302 (c) reads as follows:

> "* * * That nothing in this Act shall be construed to authorize the regulation of * * * (2) rates charged by any common carrier or other public utility, * * *."

The Price Administrator had been permitted by courtesy to participate fully in the investigation ordered and with the request from the Chairman of the Commission that he present testimony—

> "regarding the aims and purposes of the Office of Price Administration during this period of national emergency, and we are very much interested in learning the attitude of the Office of Price Administration as to the relation of those aims and purposes to the present proceeding." (R. I, 123)

Other requests of like nature were made many times (R. I, 123, 126, 133, 138, 139-140, 143; R. II, 416, 417, 443).

On August 19, 1942, counsel for the Price Administrator requested and was granted a continuance to September 4th so that he could prepare for cross-examination and prepare testimony to be presented by him (R. I, 102, 104, 106, 107, 110, 111). He cross-examined all witnesses and presented testi-

mony through three witnesses (R. 1, 151, 158, 169) and filed two briefs (R. I, 62, 181).

The Commission took under consideration the record and the briefs and on October 13, 1942, issued its findings and opinion and Order No. 2401 (R. I, 39-57). In the meantime, the Emergency Price Control Act was amended October 2, 1942, by Public Law 729, 77th Congress (56 Stat. 765, 50 U. S. C. A. 961). Section 1 of the amendment of October 2 provided that no common carrier or other public utility "shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency".

Section 2 of the amendment of October 2 provided that the President may suspend Clause (1) of Section 302 (c) of the Emergency Price Control Act, "but he may not under the authority of this Act suspend any other law or part thereof". The President was not given the authority to supend Clause (2) of Section 302 (c), which denied to the Price Administrator the regulation of common carrier or other public utility rates.

Under the terms of the sliding scale arrangement, rates become effective with the "rate year" beginning September 1, but the Commission directed the utility's attention to the requirement of Section 1 of the amendment of October 2 in the following language:

> "However, the Commission directs the attention of the Company to the provision contained in the Act approved October 2, 1942, entitled * * *." (R. I, 56).

The Commission then set out in its order, the language of Section 1 of that Act.

On October 15, 1942, in compliance with the direction contained in the Commission's order and the provisions of the Act of October 2, the Washingtin Gas Light Company (the "Company") served notice upon the Director of Economic Stabilization (the "Director") of the proposed increase in rates and

served upon him a copy of the Commission's order as well as a copy of Order No. 1458, promulgating the sliding scale (R. I, 187-190). On November 16, 1942, 30 days after notice to the Director, the Company put the new rates into effect as of that date. (R. II, 429, 430, 431).

On October 19, 1942, the Price Administrator on behalf of the Director filed a petition asking (1) that the Commission vacate the order of October 13; (2) that the proceedings be reopened; (3) that the Director be allowed to intervene in the proceedings, and complained that the issuance of the order, without permitting him to intervene denied him

> "his right to appear in this proceeding for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers or other public utilities."

Accordingly, the Commission on October 23, 1942, (R. I, 60-63) reopened the proceedings for the second time and granted the Director the right to intervene and set the matter for further hearing on November 2 (R. I, 63)—

> "for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stablization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and intervention is granted for such purpose." (R. I, 62-63).

At the reopened proceedings, the same counsel for the Price Administrator who had participated in all previous proceedings and filed two briefs appeared for the Price Administrator on behalf of the Director. Counsel for the Petitioners called no witnesses but again renewed his motions to have the Com-

mission depart from the investigation ordered by it and to re-examine and to reconsider the sliding scale plan. The Commission denied the motions and requested counsel to present testimony in accordance with the petition of the Director and its order reopening the proceedings (R. I, 215, 218). He offered no testimony in response to that request, but again asked the Commission to vacate the order of October 13 and said that was the basic issue, using this language, "The basic issue here is the question of the revocation of the Commission's order" (R. I, 220). Counsel for the Petitioners asked for a continuance until November 4 for the purpose of permitting him to consult with his associates to see what further steps would be taken in the proceedings. (R. I, 215, 216, 217, 218, 220).

When the hearings reconvened on November 4, counsel for the Petitioners again renewed his motions to re-examine and reconsider the basic elements of the sliding scale plan and, upon denial by the Commission, he called to the witness stand an official of the Company for further cross-examination about a computation presented in August. He offered no other testimony(R. I, 183-229).

No testimony was offered "concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942 as amended by the Act of October 2, 1942," nor "the effect thereon of increases in rates and charges of common carriers or other public utilities." (R. I, 220-229; Transcript 969-1149).

Counsel for the Petitioners asked the Commission to review, reconsider, and revise the basic elements of the sliding scale plan by changing (1) the method of determining the rate base; (2) the method of computing annual accruals for retirement reserve; (3) the primary rate of return; (4) to disallow certain operating expenses; and (5) to permit them with "no strings or restrictions" attached to go into any issue relating to rate-making "regardless of the terms of the sliding-scale arrangement." He asked that he be permitted to go into any question, "without restriction as to the type of evidence to be

presented or otherwise limiting the scope of further hearings to be held in this matter." He asked the Commission "to throw the case wide open." (R. I, 38, 65, 106, 107, 127, 149, 151, 167, 200, 206, 207, 209, 210, 228; R. II, 345-346, 417, 440-441).

The statutory order instituting the investigation and the statutory notice did not call for a re-examination, reconsideration and revision of the provisions of the sliding scale. On the contrary, both called for the annual investigation in conformity with the sliding scale arrangement. The Commission refused to change and enlarge the issues and to broaden the scope of the hearings and ruled that the proceeding would be conducted pursuant to the terms of the order and the notice. (R. I, 97, 106, 121-123, 132).

The Commission's Rules of Practice and Procedure provide it may grant or deny a petition for leave to intervene or may grant it "upon such conditions and limitations as it may prescribe." The Rules provide that granting such a petition "shall not have the effect of changing or enlarging the issues in the proceeding" except when such change or enlargement "is expressly requested in the petition and is expressly granted by the Commission after opportunity for hearing upon the question has been afforded all other parties." (R. I, 251, 252). The petitions to intervene before the Commission did not expressly request a change or enlargement of the issues (R. I, 34-37; 57-60).

The Act creating the Commission provides it shall have power to adopt reasonable and proper rules and regulations relative to investigations made by it "and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it." (R. I, 248). The statute requires the Commission to advise the utility of matters under investigation that require formal hearings. It requires the Commission to give the utility ten days' notice of the time, place, and the matters to be heard. The notice

may not be issued sooner than ten days after the utility has been advised of the matter under investigation. No order affecting rates may be issued without a formal hearing (R. I, 247-248).[2]

The calculations made by the Commission's staff showed that under the sliding scale, the Company was entitled to a rate increase of $324,718.06; the Company's computation indicated an increase of $381,597. The difference in the calculations was due to adjustments in operating expenses and taxes. (R. I, 254; R. II, 435). In the light of existing conditions and to prevent any inflationary effect which such allowance would invite, the Commission disallowed as operating expenses all excess profit taxes and Federal income taxes greater than 31% of the Company's tax liability (R. I, 258, 261-262; R. II, 436, 438). After giving consideration to all factors (R. I, 254, 262, 265; R. II, 437, 438), including economic conditions due to the war (R. II, 435), the Commission reduced the computations under the sliding scale by $123,293.32 below that made by the Commission's staff (R. I, 266; R. II, 429) and found the Company was entitled to an increase in rates which would produce $201,424.74 (R. I, 265, 268; R. II, 429). The rate schedules put into effect increased rates by $200,141[3] (R. I, 266). Petitioners did not question the calculations under the plan (R. II, 392).

The total increase for all customers was 2.28% in excess of rates in the preceding rate year (R. I, 267; R. II, 438). Domestic consumers using 2500 cubic feet or less per month

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[2] Paragraph 7 of the statute (37 Stat. 978, Title 43-306 D. C. Code) provides "That the Commission shall value the property of every public utility—at the fair value thereof at the time of said valuation." Paragraph 8 provides that before holding a public hearing in a valuation proceeding, the Commission must give the utility "notice of not less than thirty days".

The proceedings leading up to the basic valuation prior to the establishment of the sliding scale plan began in March 1932. The order of final determination was issued March 19, 1935, after 3 years of inventory, appraisal, investigations and public hearings, without litigation in the courts. Further investigations and hearings were held in the establishment of the sliding scale. A new method of establishing the rate base and rates of depreciation, and a determination thereon, would defeat the annual adjustment of rates now accomplished under the sliding scale plan.

[3] See footnote (4) on page 9.

had no increase in their rates. The Commission found that the cost of gas constitutes only 1.17% of the average cost of living in Washington and that the increase in rates would increase the cost of living index by only about 1/37th of 1%. The Commission found that such increase would not have material inflationary tendencies. (R. I, 267; R. II, 438).

To guard against the possibility of increase in rates that might result in the liability for excess profit taxes in the new rate year derived from the rate increase authorized, the Commission incorporated in its order a provision that if the increased rates should impose a liability for excess profit taxes, any such amount should be recorded in a specially provided deferred credit account and refunded to consumers [4] (R. I, 56-57).

During the year 1942, the Company had a wage rate increase of about 16%, resulting in wage increases of $380,000 [5] (R. I, 109, 110, 264).

The two interveners appealed from the Commission's order. The Company took no appeal and made the rates effective November 16, 1942. The appeals of the interveners complained they had not been given "the opportunity of full intervention" and "a full and fair opportunity to be heard" because the Commission refused to change and enlarge the issues and broaden the scope of the hearing (R. I, 3-6, 237-240). The District Court denied motions to dismiss the appeals and vacated the Commission's order. Both the Commission and the Company appealed from that judgment.

The United States Court of Appeals for the District of Columbia found that "the order of the Commission was issued only after a deliberate and a careful study of the factors

[4] As a result of this provision of the order, the Company refunded to its customers $38,000 of the authorized increase and thereby reduced the net increase to $162,000.

[5] The wage increase suffered by the Company during the year was approximately $218,000 more than the rate increase after the refund referred to in footnote (4) was made. The publicly announced policy of the Price Administrator as well as the national policy in fixing commodity prices is to give effect to wage rates and the cost of production. If the Commission had considered increase in wages alone, it would have been justified in authorizing an increase in rates far in excess of the amount ordered by it.

affecting the business of the utility in war-time Washington, without a trace of hasty or arbitrary conduct on the Commission's part." (R. II, 438) The Court said the important issue in the case turns upon the action of the Commission in confining the rate investigation to an application of the sliding scale to prevailing conditions and a consideration of the possible inflationary effect of a price increase and in refusing a demand of the Price Administrator that a thoroughgoing examination be made into the rate base, the rate of return, operation expenses, and depreciation and all other matters relative to the establishment of a fair return (R. II, 431). The Court said the essence of the question raised by Petitioners is—

> "whether the Commission, as the regulatory body, or the Price Administrator, as intervener, should control the scope of the investigation." (R. II, 442).

The Court further found that there was no refusal on the part of the Commission to receive evidence with regard to the inflationary effect of an increase of rates. It said:

> "The conflict arose when the Price Adminnistrator departed from the field committed to his care and demanded that the Commission suspend the application of the sliding scale, and re-examine its basis in a complete investigation of all the elements that enter into the determination of a utility rate by a regulatory body." (R. II, 443).

The Court of Appeals said a sliding scale arrangement "involves the basic elements of rate making, including a rate base, a fair rate of return and a correct determination of revenues, expenses and depreciation." (R. II, 439). It said the Price Administrator demanded "a full exhaustive examination into the rate base, the rate of return, the operating expenses and method of depreciation, and all other elements that usually enter into a utility rate investigation by a regulatory commission." (R. II, 440). It said "Indeed all of the subjects were so

tied together that no substantial change could be made in one without a survey of the entire field." The Court said that the Price Administrator requested the Commission to "undertake a revaluation of the Company's rate base." (R. II, 441).

The Court reversed the judgment of the District Court with instructions to dismiss the appeals from the Commission's orders (R. II, 443).

SUMMARY OF ARGUMENT

I. The facts of record demonstrate that the Petitioners, as interveners, sought to have the Commission depart from the investigation instituted by it and to change and enlarge the issues and to broaden the scope of the hearing. Interveners have no such right. Intervention must be in subordination to and in recognition of the main proceeding.

The statute authorizes the Commission to adopt rules to regulate the conduct of its investigations and hearings. The Commission's rules do not permit a change or enlargement of the issues except when expressly requested and expressly granted. The regulatory agencies are free to fashion their own rules of procedure and determine the method of making their inquiries and to control the range of their investigations.

II. The Commission complied with all statutory requirements and its Rules of Procedure. Its determination was made pursuant to statutory authority and is supported by substantial evidence. The Commission could not grant the request to revise the sliding scale plan under the order of investigation without violation of the statute. Failure to grant the request did not give Petitioners a cause of action.

III. Before the increased rates were put into effect, the Director was given thirty days' notice and consent was given to his intervention. The Petitioners were given full and complete opportunity to be heard on all issues before the Commission, which opportunity they exercised. The Act of October 2 was complied with in letter and spirit. Petitioners abandoned the purpose for which

the proceedings were reopened, and they have no cause to complain of a lack of a fair hearing. Notice with liberty to contest the facts and to disclose pertinent and material facts is such a hearing as one is entitled to have under the law. Limiting the scope of the proceeding to the order of investigation and notice of hearing is not a denial of a fair hearing.

IV. The Commission gave careful study and consideration to all factors. It made ample findings based upon the evidence of record and stated the reasons for its determination. Legislative findings of an administrative agency made after a full hearing and predicated upon the record, may not be disturbed. Rate-making calls for the exercise of enlightened judgment and discretion of a qualified and experienced body. Legislative discretion extends to the method used in reaching a legislative determination, as well as that determination itself. Congress has committed rate-making to the informed judgment and discretion of the Commission.

ARGUMENT

I

Intervenors May Not Compel a Regulatory Body to Change and Enlarge the Issues and Broaden the Scope of the Hearing.

The record, as shown by the counter statement, demonstrates clearly that what Petitioners sought before the Commission was to have it depart from the order of investigation instituted by it and to re-examine, reconsider, and revise the provisions of the sliding scale plan and to broaden the scope of the hearing for that purpose. Their complaints in the Courts below were that because the Commission refused to change and enlarge the issues and broaden the scope of the hearing for such purpose, they were denied a fair hearing. The real question presented by the petition is whether the Petitioners, as interveners, may control the scope of the investigation and hearing.

Intervention may not change or enlarge the issues and should not be permitted unless it is in subordination to and in recognition of the propriety of the main proceeding.

Chandler & Price Co. v. *Brandtjen & Kluge*, 296 U. S. 53;
Baxter v. *McGee*, 82 F (2) 695 (certiorari denied 298 U. S. 680);
Thorn Wire Hedge Co. v. *Fuller*, 122 U. S. 535, 30 L. Ed. 1235.

Paragraph 32 of the Commission's Act (37 Stat. 982, Title 43-402, D. C. Code, 1940 Edition), (R. I, 248) provides that the Commission shall have power to adopt rules and regulations relative to all investigations and to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings before it. The Commission's Rules of Practice and Procedure (R. I, 251-252) provide that the granting of a petition to intervene shall not have the effect of changing or enlarging the issues, except where such change or enlargement is expressly requested in the petition and is expressly granted.

This Court has said that regulatory bodies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties, and "to control the range of investigation".

Federal Communications Commissioin v. *Pottsville Broadcasting Company*, 309 U. S. 134;
Spiller v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117.

In *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, this Court said:

> "The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself."

See also, *Railroad Commission* v. *Pacific Gas & Electric Co.*, 302 U. S. 388; and *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575.

II

The Complaint of the Interveners Did not State a Cause of Action.

The Commission complied with all its statutory requirements and acted within its rules. The sliding scale plan is authorized by law, and the determination made in pursuance thereof is supported by substantial evidence. The Petitioners sought to cause the Commission to review the basic elements of the sliding scale plan and to revise the provisions thereof. This could not be done under the order of investigation or notice of hearing, and to have done so would have been in violation of statutory requirements. The failure of the Commission, therefore, to comply with the request of the Petitioners did not give the Petitioners cause of action.

Utah Fuel Co. v. *National Bituminous Coal Commission*, 306 U. S. 56;

Powell v. *United States*, 300 U. S. 276.

III

The Act of October 2, 1942, was Complied with, both in Letter and Spirit.

The Emergency Price Control Act of 1942 expressly denied the Price Administrator the right to regulate rates charged by any common carrier or other public utility (R. I, 249). The amendment of October 2, 1942, (in so far as pertinent here) merely provided that before a common carrier or other public utility shall make any general increase in rates which were in effect on September 15, 1942, it shall first give thirty days

notice to the President, or his designated agency, and consent to the timely intervention by such agency before the body having jurisdiction to consider such increase. The President was given the power to suspend certain provisions of the Emergency Price Control Act, but he was not given authority or power to suspend Clause (2) of Section 302 (c) which denied to the Price Administrator the right to regulate utility rates (R. I, 250).

The proceedings before the Commission were closed twice before the enactment of the amendment of October 2. The Commission issued its order on October 13, 1942, and directed the Company's attention to the requirement to give thirty days' notice prior to the increase in rates. Notice was served upon the Director on October 15, 1942 (R. I, 187-190; R. II, 429, 430), and the Company consented to the intervention by the Director (R. I, 191, 194; R. II, 431).

The proceedings were again reopened for the purpose of permitting the Director to present testimony in accordance with his petition for such purpose, and his counsel was requested by the Commssion (R. I, 215, 218), to present testimony in accordance with that petition and the Commission's order. Counsel abandoned the very purpose stated in the petition for reopening and granting intervention. He offered no testimony in respect of the comprehensive national economic policy and the effect thereon of increases in rates and charges of common carriers or other public utilities (R. I, 183-229). Petitioners abandoned the very purpose for which the proceedings had been reopened and intervention had been granted. They, therefore, have no cause to complain that they did not have a full and fair hearing.

Vandalia Railroad v. *Public Service Commission*, 242 U. S. 255;

Midland Realty Co. v. *Kansas City P. & L. Co.*, 300 U. S. 109.

"The right to a full hearing before any tribunal does not in-

clude the right to challenge or rely on evidence not offered or considered."

Federal Power Commission v. *Natural Gas Pipeline Co., supra.*

When one had full notice and appeared at the hearing with liberty to contest the facts and introduce any evidence *pertinent to the case*, with the right to a full and fair disclosure of the *material facts*, he has had such a hearing as he was entitled to have under the law.

Monongahela Bridge Co. v. *United States*, 216 U. S. 177.

When one has failed to take advantage of the opportunities offered him, he foregoes the right to question the propriety of the proceedings.

Alabama Power Co. v. *Federal Power Commission*, 75 U. S. App. D. C. 135, 128 F (2) 280 (Certiorari denied, 317 U. S. 652).

There was no failure to grant a fair hearing by limiting the scope of the investigation to the Commission's order and notice.

American Toll Bridge Co. v. *Railroad Commission*, 307 U. S. 486.

IV

Commission's Findings and Order are Supported by Substantial Evidence.

After hearings extending over many days from August 18 to November 4, 1942, and after careful study and consideration had been given to all factors having a bearing upon the questions presented (R. I, 254, 265), and "after weighing all factors to the best of our (its) ability" (R. I, 262), the Commission made its determination of the amount of rate increase that should be ordered. It considered the necessity for an increase

in rates because of the necessity of providing adequate service (R. I, 263-264) and found that an increase in rates in the amount of $201,424.74 was required. In its findings and opinion, the Commission discussed the evidence and stated its reasons for its findings, and set out in tabular form its determination and disposition of the amount by rate schedules (R. I, 265, 266).

Legislative findings of an administrative agency made after a full hearing will not be disturbed unless plainly shown to be overborne by the evidence.

St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38.

"So long as there is warrant in the record for the judgment of the expert body, it must stand."

Rochester Telephone Corp. v. *United States*, 307 U. S. 125.

The structure of a rate schedule calls in peculiar measure for enlightened judgment which a rate-making body is qualified by training and experience to perform.

Mississippi Valley Barge Line Co. v. *United States*, 292 U. S. 282.

The Commission is the body to whose informed judgment and discretion Congress has committed the determination of facts to support a rate order.

Swayne & Hoyt, Ltd. v. *United States*, 300 U. S. 297.

The legislative discretion employed in rate-making power extends to the method used in reaching the legislative determination as well as that determination itself.

Los Angeles Gas & Electric Corp. v. *Railroad Commission*, *Supra.*

CONCLUSION

The Act of October 2, 1942, was fully complied with and it

is respectfully submitted that the petition for writ of certiorari should be denied.

RICHMOND B. KEECH,

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